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Fast Lanes Do Not Have to Affect Internet Speeds & Why Reverse Blocking Should End the Net Neutrality Debate

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In last week's blog post "Dear Internet: The Most Confused We Have Ever Been - Should the Internet be Regulated" ([click here](#)), we stated that the creation of fast lanes by ISPs did not necessarily mean there would or must be slow lanes. Furthermore, we highlighted that the FCC would require robust ISP disclosure whenever ISPs create fast lanes to ensure that they were not harming the "open Internet." Yet, Net Neutrality proponents continue to write that there is no way to create fast lanes without creating slow lanes.

Think of Fast Lanes Like HBO and MTV. We fundamentally disagree with fast lane skeptics. In fact, we suspect many fast lane skeptics have actually been using fast lanes and did not even realize it. In our home office we do not have a television. In turn, we often use an iPad with the free TWCTV app ([click here](#)) for live television. We first wrote about the TWCTV app, a managed service, in March 2013 ([click here](#)).

The FCC enabled managed services or specialized network services in their December 2010 Preserving the Open Internet Order (note: this rulemaking was mostly overturned by the courts earlier this year).

"In the Open Internet NPRM, the Commission recognized that broadband providers offer services that share capacity with broadband Internet access service over providers' last-mile facilities, and may develop and offer other such services in the future. These "specialized services," such as some broadband providers' existing facilities-based VoIP and Internet Protocol-video offerings, differ from broadband Internet access service and may drive additional private investment in broadband networks and provide end users valued services, supplementing the benefits of the open Internet."

“At the same time, specialized services may raise concerns regarding bypassing open Internet protections, supplanting the open Internet, and enabling anticompetitive conduct”

Time Warner Cable dedicates distinct bandwidth for the TWCTV app, no different than when it needed to allocate bandwidth years ago for HBO HD or MTV HD. Time Warner Cable is not harming or taking bandwidth away from its Internet product at all. However many 6 Mhz channels Time Warner Cable dedicates to “the Internet” remain dedicated to the Internet. What is happening is that 6 Mhz channels that historically were used for analog video are being repurposed in an increasingly all-digital environment, freeing up capacity for other uses (including Internet access, dedicated IP services, etc). The TWCTV content flows from Time Warner Cable’s digital center in Denver directly to households across their footprint on Time Warner Cable’s proprietary backbone, the apps’ content NEVER touches the open Internet (no peering, no interconnections). The TWCTV app feels like you are using the Internet (has the look and feel of any other video app) on your iOS, Android, Roku or Samsung smart TV. As a managed service the TWCTV content can be delivered more reliably and in higher quality without impairing the Internet in any way.

- ISPs across the country are delivering managed or specialized network services. This is how VoIP works today on cable systems and Net Neutrality proponents never complain. Beyond VoIP, Cablevision, Time Warner Cable, Cox and Comcast all have live, linear IP-video products that are delivered in the home as managed or specialized network services IP-services to a variety of devices.

Complaints over managed service (fast lanes) last reared their head in 2012 when Netflix’s Reed Hastings called out Comcast’s Brian Roberts on his public Facebook feed for Net Neutrality violations (see screenshot embedded to the right). Afterwards, we wrote a blog ([click here](#)) called “Reed Hastings vs. Brian Roberts: Is a Free and Open Internet at Risk or Simply Much Ado About Nothing?” -

Conceptually, if Netflix or any other company wants to pay Comcast or any other ISP to create a dedicated channel for their IP-based service that NEVER touches the actual Internet, we have a hard time understanding why the government needs to impose regulations to prevent that. How can the government decide that adding VoIP is okay, adding HBO Ultra HD is okay, but adding a dedicated Netflix IP-channel is bad?

- The critical caveat here is that the government needs to understand what is being done by ISPs and monitor to make sure that ISPs are not intentionally failing to upgrade their infrastructure to push companies to sign direct, managed service “fast lane” deals away from the open Internet.
- The government must ensure that ISPs cannot discriminate who they allow to pay for dedicated IP-service fast lanes, in order to protect the ISPs own strategic interests.

- While not the reason to allow dedicated IP-services or managed services, it is worth noting that if content that is congesting the Internet shifts to a managed services and leaves the Internet, it would notably improve bandwidth for all other websites/services – meaning this helps new start-ups versus the perception that it hurts start-ups.

Reverse Blocking is Happening Right Now and Should End the Net Neutrality Debate As noted in our Internet regulation blog last week, open Internet proponents believe that once a consumer has paid their monthly fee to an ISP they should have high-quality access to every website that is not behind a paywall. In other words, ISPs should not be able to “double-dip” and ask certain content providers/websites to pay them on top of what ISPs are paid by consumers (everyone points to the recent Netflix Comcast peering/interconnection situation).

If you are a CableOne broadband-only customer in Sherman, Texas right now and try to watch “The Ex and the Why” you are greeted with the following screen embedded to the right (same story with Teen Mom 2 in the second screenshot embedded on the right). Essentially, Viacom is blocking all CableOne broadband subscribers from accessing any of their websites because CableOne has not reached a new programming deal with Viacom. The industry term for this behavior is “reverse blocking.”

While we could potentially understand Viacom blocking CableOne subscribers who also pay for video service, broadband-only subs are simply trying to access what is a free and open website. In fact, if the CableOne sub turned off their in-home broadband and used an LTE hotspot from Verizon, Viacom’s websites would work perfectly, despite Verizon Wireless not having compensated Viacom for these very same websites for which CableOne is being asked to pay.

- A similar battle played out last summer when CBS blocked all Time Warner Cable broadband subscribers from reaching CBS.com, regardless of whether those broadband subscribers were also TWC video subscribers.

The key takeaway here is that subscribing to Internet service does not give you access to every website without an ISP pay wall. Content owners have the ability to block any ISP from accessing their content unless the ISP pays them a fee. In turn, why is it okay for a website to demand payment from an ISP (as we see in Viacom CableOne dispute), but it is against open Internet principals for an ISP to seek payment from a website to reach an ISPs consumers (such as Comcast did with Netflix)?

- Either allow both forms of blocking with the expectation that the free markets will balance behavior or prevent both forms of blocking. Regulating in only one direction appears to be a major mistake, especially as leverage could shift notably over the next several years.